



**BRIEFING: OCTOBER 14, 2013 BOARD MEETING AGENDA ITEM #5**

**TO:** Chairman Richard and Board Members

**FROM:** Tom Fellenz, Chief Counsel

**DATE:** October 14, 2013

**RE:** Adoption of a Policy for Unsolicited Proposals

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**Introduction**

As the Authority moves into construction of the Initial Operating Segment (IOS), staff has continued to develop and refine plans for funding future segments and for covering other costs associated with the construction, operation, and maintenance of the high-speed rail system. While a variety of potential sources exist, the private sector offers several unique benefits, including the transfer of risk away from the state and taxpayers.

To date, the Authority has received unsolicited proposals and inquiries for a range of services with varying levels of detail and commitment. In the absence of a formal policy with guidelines, the Authority is not able to give the appropriate level of consideration to such proposals. It is in the Authority's interest to gather ideas from industry and transparently evaluate proposals that provide value to the State. Both domestic and international experience in project delivery shows that firms will submit unsolicited proposals when they have a good idea and thus a potential competitive advantage to participate on large infrastructure projects. The Authority needs a formal policy and transparent methodology for evaluating unsolicited proposal ideas and initiating competitive procurements for those that have value to the state. Because the Public Utilities Code Section 185032 grants the Authority exclusive authorization and responsibility for the planning, construction and operation of high-speed train service (in excess of 125 miles per hour) in California, adoption of a policy could facilitate innovative proposals to accelerate the development of sections of the program, including Phase 2.

Several state transportation agencies have unsolicited proposal policies, including but not limited to:

- California Department of Transportation (draft form)
- Virginia Department of Transportation
- Arizona Department of Transportation
- Nevada Department of Transportation
- Texas Department of Transportation
- Pennsylvania Department of Transportation

- Florida Department of Transportation
- Colorado Department of Transportation

Virginia Department of Transportation (VDOT) has had an unsolicited proposal policy in place for many years and has received extensive interest from industry participants. For example, in 2010, VDOT received an unsolicited proposal from a group of infrastructure developers including Skanska and Kiewit, to develop the Hampton Roads Bridge-Tunnel and Interstate 64 project. In 2011, VDOT competitively procured the project and received competing proposals from infrastructure developers including Cintra and ACS/Dragados.

In July, VDOT received an unsolicited proposal for the U.S. 460 at Odd Fellows Road project. In response to the unsolicited proposal, Governor McDonnell stated:

*“Virginia's ability to partner with the private sector to advance much needed transportation solutions is critical to the long-term success of our transportation program. Receipt of this proposal once again demonstrates Virginia's position as a leader in the P3 market and how, by partnering with the private sector, we can advance projects in a more timely and efficient manner with limited state investment.”*

Recently, the Arizona Department of Transportation (ADOT) received an unsolicited proposal for a public-private partnership for the South Mountain Freeway. ADOT will evaluate the proposal, which the private company pays for, before deciding whether to competitively procure the project. In response to the unsolicited proposal, ADOT Director John Halikowski stated:

*“Any public-private partnership proposal has to be aligned with the goals and interests of taxpayers. We look for concepts that can be done better, faster and less expensively, providing real value for the traveling public.”*

The federal government allows unsolicited proposals, governed under subpart 15.6 of the Federal Acquisition Regulations. The United States Agency for International Development (USAID) explains its rationale this way:

*“You never know where the next great idea will come from. That’s why USAID welcomes unsolicited contract proposals and assistance applications for consideration.”*  
(<http://www.usaid.gov/work-usaid/get-grant-or-contract/unsolicited-proposals>)

Local governments in the United States also allow and seek out unsolicited proposals. For example, the Regional Transportation District of Colorado has a formal unsolicited proposal policy in place that has resulted in receiving unsolicited proposals from firms such as Kiewit and Graham Contracting Limited. This has led to the competitive procurement of the I-225 Rail Project and the North Metro Rail Project.

Foreign governments also allow and seek out unsolicited proposals. The Government of New South Wales (NSW), Australia explains its policy:

*“The NSW Government will encourage the best ideas and solutions from the private sector and a greater level of private sector investment and participation in projects, with rigorous planning and costing to deliver the highest standards of public value – and confidence to investors and the community....[the] key objective is to provide consistency and certainty to private sector participants as to how their unsolicited proposals will be assessed within a transparent framework with key drivers for the NSW Government being how the proposal helps meet a strategic Government objective and value for money.”*  
(<http://www.nsw.gov.au/unsolicitedproposals>)

## **Background**

The Authority should actively seek out and encourage unsolicited proposals from the private sector that are innovative, well-defined, and offer the Authority a valuable product or service that meets a defined need.

Generally, these types of unsolicited proposals are written offers to perform a proposed task or initiative that is: (1) innovative and unique; (2) independently-initiated and submitted by a prospective contractor with the intent of obtaining a contract; (3) of sufficient size and benefit to warrant a full review process by the Authority; (4) presented in sufficient detail so that the benefit to the Authority is clear; and, (5) aimed at meeting a defined need of the Authority.

Consistent with policies of other government agencies, the Authority would not consider proposals consisting of vague offers or explorations that are: (1) for research or further development; (2) proposal explorations; (3) technical inquiries; (4) standard, off-the-shelf products or services; (5) requests for product endorsement or capital funds to bring a product to market; or, (6) prove impossible to evaluate due to lack of information.

An unsolicited proposals policy/program is not intended to replace or supplant the traditional procurement process, especially for ongoing/routine procurements, and will not result in a sole source negotiation. An unsolicited proposal will always lead to a competitive procurement if the Authority were to pursue the product or service.

## **Discussion**

In order to sort through these proposals in a thorough and transparent manner, staff proposes that the Board adopt a standard policy for dealing with such offers. Essentially, the recommended policy contains four steps. They are as follows:

### *1. Intake*

The first step in the process is to create a defined and easily navigable system for interested parties to submit their proposals. Once in place, this will allow the Authority to receive proposals and collect a non-refundable, non-negotiable fee. Following receipt, Authority staff will log and record details of proposal, then notify the steering committee of review requirement and set a timeline for evaluation.

2. *Screen*

Staff will then assess the proposal against already established Authority policies and framework. This will be followed by a high-level and detailed project screening for scope, feasibility, complexity, synergies, financial/benefit analysis, relevant studies, and budget impact. If a proposal is deemed to be consistent or beneficial to the project, staff will initiate the next in line with established frame work (i.e. initiate detailed screening).

3. *Decision*

Once reviewed extensively by staff and determined to be of merit, the proposal will be brought to executive management for review. Upon conducting another level of review, executive management will determine whether or not the proposal is worthy of pursuing and if so, recommend that the staff move forward with a competitive procurement.

4. *Procurement*

Depending on the size, scope, and nature of the proposal, staff may come to the Board for approval of their recommendation to proceed to a competitive procurement. Whether or not staff goes to the Board for approval, once it has been determined to move forward, a competitive procurement will take place.

**Recommendation**

Staff recommends that the Board authorize and direct the Chief Executive Officer, or his designate, to sign and appropriately disseminate the Unsolicited Proposals Policy for the California High-Speed Rail Authority and to develop procedures for the receipt, evaluation, and timely disposition of unsolicited proposals within the framework of and consistent with the Unsolicited Proposals Policy.

**Attachments**

- Resolution #HSRA 13-29